



## AFRICA RIGHTS TALK - SEASON 2 EPISODE 2

### Discussion on the United Nations Global Study on Children Deprived of Liberty *In conversation with Professor Manfred Nowak*

*Africa Rights Talk* is a [Centre for Human Rights podcast series](#) exploring human rights through conversations with academics, practitioners and activists. The *Africa Rights Talk* series is hosted by [Tatenda Musinahama](#). Each episode offers insight into the African human rights system and the state of human rights in Africa, and globally.

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Tatenda: In today's conversation we have Professor Manfred Nowak, who is the independent expert leading the [United Nations Global Study on Children Deprived of Liberty](#). Welcome to today's conversation.

Manfred: Hi, good morning it's really nice to be here.

Tatenda: We are so happy to have a man of your repute joining us today for the [HRDA Alumni celebrations](#) it's such an honour and welcome to the conversation.

Manfred: Thank you very much. I was following what all the alumni have done from after 20 years of the African Master ([Human Rights and Democratisation in Africa \(HRDA\) Master's programme](#)). Some of them are chairpersons of the [African Commission on Human and People's Rights](#) or chairpersons of the [UN Working Group on Discrimination Against Women and Girls](#). They have high positions in government, in courts, in international organisations, in non-governmental organisations. It's amazing to see all those people being part of the Global Campus. I'm here in my main function as the Secretary General of the [Global Campus of Human Rights](#). It is a network of [seven regional master programmes](#) in all world regions from Latin America, Africa, Asia Pacific, the Arab World to Europe, the Caucasus and the Balkans, and we are the biggest network in about 100 universities around the globe.

Tatenda: Oh wow, okay.

Manfred: We are the biggest network of postgraduate human rights education. As I said before, as the biggest network of virtualized education , we moved a long way from originally a European Association, a non-profit association, to now a global one and the constituent General Assembly is taking place on International Human Rights Day on the 10<sup>th</sup> of December here in Pretoria.

Tatenda: In the African context we are still coming to terms with trying to understand the concept of children having rights, now we're moving from a point where we have to observe children's rights to a place where we are focusing on a study that focuses on children deprived of liberty. So can you explain to us what that really means?

Manfred: Yes. Perhaps we should start with the [UN Convention on the Rights of the Child \(UNCRC\)](#). It just celebrated its 30<sup>th</sup> anniversary, which is from 1989. It's one of the most successful UN human rights treaties because it is ratified by almost all countries in the world, 196 parties. It is a very broad way of seeing children not primarily as objects of guilt but as subjects with rights, as rights holders, the paradigm shift. There are many areas for instance, there was Graça Machel. She did her first [Global Study on Children in Armed Conflict](#) which had a major impact on child soldiers, the way in which the [Security Council](#) deals with these issues and it had a positive impact. They're less child soldiers today than before. In 2006, we had the second global study by Paulo Sérgio Pinheiro, a well- known Brazilian human rights professor on [Violence Against Children](#). That is all forms of violence, in the streets , in the family, in schools and institutions, etc. He also said that, of course, if children are deprived of liberty, then the risk of being subjected to physical, mental and sexual violence is big. That is why [the General Assembly of the United Nations](#) in 2014, invited the Secretary General of the United Nations to commission another [Global Study on Children Deprived of Liberty](#).

By children, we mean, according to the Convention, every young person up to the age of 18. Secondly, the [Convention on the Rights of the Child](#) says that for children, deprivation of liberty should only be a measure of last resort, that means an exception and if absolutely necessary, then for the shortest period of time. And that's the very idea of the global study to look into the magnitude of the problem simply don't know how many children are behind bars.

Now, what does it mean to say deprivation of liberty? Of course, when a 16 year old boy is committing some kind of crime, this boy might be arrested by the police and put in police custody. Then if it is a serious crime, he will be charged and might spend some time in pretrial detention and finally he might even get a

prison sentence. So, that is what people usually understand as deprivation of liberty, being in prison or incarcerated. However, there are many other reasons why children might be deprived of liberty. For instance, migration-related detention plays a big role in many countries of the world in Europe, the United States, in Australia, etc and partly also in Africa. But the biggest number of children that are in reality deprived of liberty, where they cannot leave at their own will in these institutions. They might start with orphanages or children's homes for children with disabilities, for children who have drug problems for their rehabilitation for their protection and care. Sometimes these are naughty kids and they are not yet old enough for the criminal justice system. So what do you do with a 10 year old who commits perhaps murder or robbery etc? So, they should be dealt with by the child welfare system but often they are ending up in institutions where they are deprived of liberty. The same is if you think about child soldiers, think about Boko Haram, for instance, or Al-Shabaab and many others. Then they are arrested by the military and end up in military detention, often in terrible conditions so children that are accused of terrorism, etc.

The last one is children who might grow up with their mothers in prison because the mother is sentenced to a prison term, and there's nobody else who can take care of the child. When I was [Special Rapporteur on Torture](#), I visited so many prisons around the world and I often saw small children to be incarcerated together with their mothers. I'm not saying everything is illegal, sometimes it's in the best interest of the child to stay with the mother, rather than to be sent to an orphanage, when the child is one year old. So it might be better if they bond with their mother in prison. What if the mother is then sentenced to 10 years of imprisonment and they still are separated? These are very difficult questions where the [Convention Rights of the Child](#) actually does provide an answer, but we always have to balance the different interests.

Tatenda: That's a very interesting perspective you bring there because so many times as adults we tend to overlook the importance of making sure that children are raised in loving homes and loving societies, and by virtue of trying to create these at institutions, I think the thinking behind that is to try and ensure that these children are raised well and that they have the best foundation they can have to a good future. So I think that's a very important study that you're undertaking there, but did you have any personal reasons why you decided to focus on this nature of a study?

Manfred: The Secretary General of the United Nations then established an inter- agency task force of the different United Nations agencies. That is [UNICEF](#), the [High Commissioner for Human Rights](#), the [High Commissioner for Refugees](#), the [United Nations Office for Drugs and Crime in Vienna](#) and the [International Organisation for Migration](#) etc. and the [Committee on the Rights of the Child](#),

plus the two special representatives of the Secretary General, in charge of implementing earlier studies. The chairperson was Martha Santos Pais, who was at that time the Special Representative of the United Nations Secretary-General on Violence Against Children because children deprived of liberty I see this as a form of structural violence. They were then charged to select an independent expert and so at a certain point in 2016, they asked me, and I felt immediately that is something I'm extremely interested in.

I served for six years between 2004 and 2010 as United Nations Special Rapporteur on Torture. I carried out 18 fact finding missions to countries in all world regions including in Africa Nigeria for instance or Equatorial Guinea or Togo. Of course, if you want to investigate torture, it is always behind closed doors so you have to get into police custody, you have to go into military camps, you have to go into prisons etc. And I saw a lot of misery, because the conditions of detention are terrible. So many persons are tortured, but personally it's worse if you see children. Children in Togo, I saw children below 18 who were already sentenced to a prison term. Because the minimum age of criminal responsibility at that time was seven years. In Equatorial Guinea, I saw many kids in police stations where they were tortured etc. In Kazakhstan I saw children in children's homes where they were beaten up every day and under strict discipline and that is heart breaking. In general, human beings should not be treated as most people are treated when they are deprived of liberty but for children it's much worse.

There are always alternatives, non-custodial alternatives that are not only better for the child but also better for the society. If you lock up kids, that's the best way rather than later, to become criminals because when they are mixed with adults they learn what they should not do. So the child welfare system, what it targets the best is the parents, they need much more support for the parents that they take proper care of the children and then they don't need to be sent to an institution. Then, of course, the risk is much lower that the child turns to crime.

All member states of the United Nations unanimously requested this study, so I had of course, a high level of cooperation. On the other hand, the journalism and the safety should not be paid from the regular budget of United Nations but from voluntary contributions. When I was appointed in October 2016 there was one state that had contributed and it was Switzerland. Also I got some more money from the Austrian government but it was far too little. So I did a lot of fundraising. I went to Geneva and New York, had fundraising dinners, we were inviting so many states to become friends of the Global Study and also contributing. Unfortunately it's only a small number, primarily European countries that provided some funds. But at the end, I was able to raise funds from high foundation and that was decisive. We also have got friends of the

global study, that means countries without giving money, but supporting the study by hosting regional events for instance, South Africa is one of them. From the very beginning, South Africa as well as Ethiopia where we had two regional thematic consultations and others are Thailand for instance or Uruguay in Latin America. So at the end we had a lot of support.

We sent out a questionnaire to all member states of the United Nations. Of course, I would have liked if all states would have responded, South Africa did, but certain states did not. We got good responses, not only from governments but from National Human Rights Institutions, from NGOs, from UN agencies etc, in relation to more than hundred states so this is the basis of our data but then of course we did a lot of research ourselves. Even the Global Campus of Human Rights was involved. We even asked the students if they could write their master's thesis in the African or in the Latin American Master's (programmes) on a particular country or particular institutions that are depriving children of liberty and do empirical research and some of them were great. So we got a lot of data from student research but also from professors and other researchers at universities and again, the [University of Pretoria](#) was a great help. Ann Skelton in particular was at that time the director of child rights centre ([Centre for Child Law](#)) at the University of Pretoria. She is the chairperson of my advisory board, which consists of 22 high level experts in the field of children's rights. She did an amazing work, not only here this difficult part of institutions was primarily researched by the University of Pretoria, but she also assisted as she came to Venice that's in the headquarters of the Global Campus and we view and give feedback to many of the other chapters that we did . Other universities, like [Vienna University](#) did a lot and many others contributed to the success of the global study, so I'm very grateful to all those who contributed. It was really a joint exercise and so I am kind of the lead also, but I would never have been able to do it without the support, so we did research work and collecting all the data from also other official sources. To give you just one example, the United States of America did not respond to the questionnaire, but many of the data are public on governmental websites so we know quite well that the number of children who are in the administration of justice, in detention police custody, in the police jails and in prisons in the United States is the highest in the world because of tough crime policies and this kind of attitude. So we got quite a lot of data on the United States and other countries, even though they didn't respond to the questionnaire.

Tatenda: What was the general nature of your findings?

Manfred: The first major question is, how many children are behind bars? So far this data didn't exist. UNICEF for some time spoke about 1 million children, but it was primarily just administration of justice. So, from all the data we collected and then of course we also had to do some statistical assessments and

extrapolations, we arrived at the conclusions that currently there are more than 7 million children deprived of liberty worldwide and it's a conservative estimate. Out of this 7,2 million, about 5,4 million of them are in these institutions. Then that is also the most controversial part because they are not really locked up in cells, but still they are not free to leave at will. In some institutions they are locked up in cells for disciplinary measures and are beaten such that the level of violence in children's institutions is really high. These may be state institutions and also private institutions.

The second is the administration of justice, about 1 million children per year are in police custody and more than 400,000 of them are in chains and prisons. There seems to be progress because 10 years ago, there was a reliable estimate of about 1 million children. So there were certain measures taken to establish child justice system, special courts for children, special police officers trained on how to deal with it when they arrest a child. They have to be well trained to do that and then to divert the child, rather than immediately put child into police custody or greater detention, to try to find a way that you can divert it to the child welfare system or perhaps, giving them a warning and then send them back to the parents and perhaps even some kind of surveillance, rather than depriving the child of liberty. So there is some progress.

Then we have about 330,000 in migration detention that's really the absolute data that we can prove. Again, the real numbers will be much higher. Their research based on also the Convention of Rights of the Child and UN treaty monitoring the bodies, UNICEF and the High Commission of Refugees have said that in the purely migration-related reasons, you should never deprive the child of liberty. So whether it's an unaccompanied child that visits another country, there should be another way. Such as a community home, where they can be housed rather than depriving them of liberty. So what we are saying is states should stop with every migration-related detention of children. We have high numbers in the United States for instance, after Mr. Trump said that in order to deter migration coming from Central America via Mexico to the United States, to separate children from their parents and some of the children taken away from their parents were just babies. Simply to deter migration, that is inhuman. There are still about 3 000 of those kids, where the kids don't know where the parents are and the parents don't know where the kids are and they're searching each other, perhaps their parents were sent back to their countries of origin, but the kids are still detained in the United States. It's human tragedies that you see there.

So, that's also in the area of terrorism related deprivation of liberty in child soldiers, of course. In the moment, the biggest problem relates to Syria and Iraq and ISIS the Islamic State, of late has been defeated and so many children, either children who were recruited as foreign fighters from Europe, from Central

Asia and other parts of the world. More or less voluntarily but very often via the internet, joining the Islamic State. Others where a family has very small children and then parents were killed and the children are left there, some were even born into so called an caliphate. So we have about 29 000 children, currently detained, either by the Kurdish authorities in the north of Syria, or by the Iraqi government in Baghdad under terrible conditions. They don't really know what to do with those kids and many of the countries of origin, don't want to have them back because they don't want to have those terrorists back in Europe or in Central Asia, and that is terrible. So we remind governments, that they are responsible for their own citizens, they should take them back not in order to put them again into jail but in order to provide them with a programme of rehabilitation, so that they can peacefully reintegrate into society.

In, armed conflict and terrorism, children should not be seen primarily as perpetrators but as victims. So there are many of those recommendations and partly the very fact that states were requested to respond to our questionnaire already started the process of not only thinking but also changing practice. To give you one good example, in Australia there were many children in migration related detention, not only in Australia but in the Christmas Island as well. While the global study was developed, there was a team of doctors sent by the National Human Rights Commission to Naho in order to assess the physical, mental habits of those children. Some of them said they have never seen such traumatised children than in Naho and the government responded. I was recently in Sydney and we discussed this with the government and the Australian Rights Commission. So, according to their information, there are no more kids in this type of migration related detention so I was very happy to hear that. We see also, for instance in Central Asia and in Eastern Europe, so the former communist states where you had a high number of kids in institutions. In Bulgaria for instance, I talked to the Minister of Children's Welfare and Social Affairs an got reliable data that the number of kids in those institutions has been reduced by more than 90% in the last 10 years so much is already being done and I'm sure much more will be done.

Tatenda: That's good, from your study did you get a grassroot approach? What was the general consensus amongst these children, how would they like to be treated?

Manfred: I'm very grateful for this question and I wanted to raise it before. When I said many different stakeholders contributed, its states, United Nations agencies, its non-governmental organisations, its academia, and most importantly children themselves. Now, what we did is we got a special client from UNICEF and to stay out of NGOs we interviewed 274 children in 22 different countries about their experience again two different forms of jails and institutions. Of course, much of what was said was very strong, and it reminded me so much of my own experience when I visited so many places.

Tatenda: Thank you so much, Professor you I'm happy that you, you mentioned that this study on children deprived of liberty is not a name and shaming exercise I mean, after all, children are the future of tomorrow. So it's important that we as governments as different stakeholders we collectively make an effort to do our best to create best practices in ensuring that these children's rights are protected in every way that we can. So just In short, what are your concluding remarks?

Manfred: As I said, I'm very happy that we are able to lounge here for this Southern African region of the Global Study. I'm looking forward to all the discussions that we have and I hope that states are developing National Action Plans. First clear targets, benchmarks, indicators to see what can be done so that we can measure in the future. So, to progress we need those follow ups by the United Nations. Not only by states but those UN agencies. Ideally we should have another special representative the Secretary General, which is a small office that these people have in New York but they can follow up and we see for instance the violence that there's so much that has been achieved and people also realise, violence, also occurs in the family, and parents are no longer allowed simply to beat up their children. Some 20 years ago, most societies thought it was normal, it was seen as a way of educating children to punish them with physical punishment. Now we realise no, it's not a good way of doing that and you might even commit a crime if you do that, like husbands who beat up their wives. Parents shouldn't beat up their children, there are other ways how you can educate them. So this kind of stuff, it's not in one day that we will have no more children in detention, but that we gradually work towards that aim.

I'm very grateful to the University of Pretoria, but also to the government of South Africa, which was not only supporting this study from the beginning but also in many areas is a model. You have some of the most beautiful judgments of the South African Constitutional Court, dealing exactly with these issues that we deal in the in a global study and we're also telling others in the global study, that is what you should actually follow in order to create a world where we don't leave children behind bars.

Tatenda: Thank you so much, Professor I enjoyed having this conversation with you.



